The European Social Charter and International Labour Standards: II[1]

Provisions concerning Application of the Charter

The substantive provisions of the Charter are followed by a number of Articles dealing with the general character and details of the structure of the international undertakings, establishing a system of supervision of application, defining methods of application and possible exceptions, and containing the customary final clauses concerning ratification, entry into force, amendments and denunciation.

International Undertakings (Article 20)

As mentioned at the beginning of this study, the authors of the Charter wanted to ensure that none of its numerous provisions should constitute an obstacle to ratification. To this end Article 20, which constitutes Part III of the Charter, expressly stipulates that the Contracting Parties undertake to consider Part I as a declaration of the aims which they will pursue and to consider themselves bound by not less than ten of the 19 Articles or not less than 45 of the 72 numbered paragraphs of Part II (the expression " numbered paragraphs " also covering Articles containing only one paragraph), which they will choose and notify at the time of ratification. This principle of allowing Parties to choose a certain minimum number of provisions met with objections from the Workers' members at the Tripartite Conference, who would have preferred all the provisions of Part II to be compulsory, but their proposal was not accepted either by the Tripartite Conference as a whole or by the Consultative Assembly.

The Workers' group at the Tripartite Conference also proposed that a period of five years, for instance, should be set for Contracting Parties to accept the provisions not included in their ratification, and the Consultative Assembly expressed the same view. These proposals also failed to gain the support of the Tripartite Conference as a whole and of the Social Committee.

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On the other hand, positive results were achieved regarding a common " nucleus " after lengthy discussion at the Tripartite Conference. Although the Conference was not able to agree exactly what provisions should go into this nucleus, a general feeling was expressed that the Charter should list a certain number of Articles or paragraphs which ratification must cover in order to constitute a common denominator for social policy in the member States of the Council of Europe. The view was expressed that certain Articles and paragraphs proposed by the delegations of Belgium, France, Italy and Sweden should be considered for this purpose. The Consultative Assembly took up this suggestion and listed the Articles which it felt should be compulsory in case of ratification.

The Social Committee then expressed itself in favour of instituting a compulsory " nucleus "; but it had difficulty in deciding which provisions should be compulsory, owing to objections by individual States to the inclusion of particular Articles in that group. The Committee finally agreed that States ratifying the Charter should accept the obligations of not less than five of the following seven Articles : 1, 5, 6, 12, 13, 16 and 19, namely those relating to the right to work, the right to organise, the right to bargain collectively, the right to social security, the right to social and medical assistance, the right of the family to social and economic protection and the right of migrant workers and their families to protection and assistance.

The method followed here is based to a certain extent on the structure of certain international labour Conventions which leave some freedom of choice to ratifying States while requiring that a minimum " nucleus " of commitments set forth in the Convention should be accepted. In particular this is the case in the Plantations Convention, 1958 (No. 110), concerning conditions of employment of plantation workers, which has a similar structure to the Charter.

After settling the extent of the obligations accepted by ratifying States in this manner, Article 20 goes on to present formal provisions concerning notification by Contracting Parties of the Articles and paragraphs chosen in this manner, the possibility of accepting other provisions subsequently, and communication of ratifications received by the Secretary-General of the Council of Europe to all signatory States and to the Director-General of the International Labour Office, as recommended by the Tripartite Conference in view of the part the I.L.O. is to play in the procedure of supervision which is described below.

The final paragraph of the Article deals with labour inspection. The subject was brought up by the Tripartite Conference following a proposal by the Belgian delegation that a new substantive Article be introduced into Part II of the Charter whereby Members would

undertake to establish and maintain systems of labour inspection and which would set out its fundamental rules for their operation. The provisions suggested were based essentially on the Labour Inspection Convention, 1947 (No. 81). The Conference decided to bring these suggestions to the attention of the Committee of Ministers, emphasising its anxiety that there should be an effective system of labour inspection and recommending that it be considered whether the provisions concerning labour inspection should be contained in Part II of the Charter, dealing with rights, or in another Part (for example Part III, dealing with undertakings by Contracting Parties), in which case States would be required to accept the relevant provisions.

The latter arrangement was finally preferred, first by the Consultative Assembly, then by the Social Committee and the Committee of Ministers. Nevertheless, paragraph 5, which was thus introduced into Article 20 of the Charter, provides merely that " each Contracting Party shall maintain a system of labour inspection appropriate to national conditions ", without specifying that in stating the basic rules of operation for the inspection service it should follow the Labour Inspection Convention, 1947 (No. 81), as the Tripartite Conference had originally suggested it should do.

Supervision of Application (Articles 21-29)

The system of supervision of application set forth in Articles 21 to 29, which constitutes Part IV of the Charter, is largely based on the corresponding arrangements established concerning international labour Conventions, with certain modifications due to structural differences between the Council of Europe and the International Labour Organisation. This system is constituted as follows.

Reports concerning Accepted Provisions (Article 21).

The system of supervision centres on two-yearly reports to be sent by Contracting Parties, in a form to be determined by the Committee of Ministers, concerning the application of such provisions of Part II of the Charter as they have accepted. This arrangement is similar to that laid down in article 22 of the Constitution of the I.L.O., under which States Members ratifying an international labour Convention are required to submit to the International Labour Office an annual report, in a form specified by the Governing Body of the International Labour Office, concerning the measures which they have taken to give effect to the provisions of that Convention. The reporting period of two years under the Charter compares with a yearly period under the Constitution of the

I.L.O.; but it must be remembered that, since 1959, States Members of the I.L.O. have been required to submit detailed annual reports only in cases of major discrepancies concerning the application of a Convention, whereas in other cases detailed reports are submitted only every other year, with a general report for the intervening period.

Under the I.L.O. system a summary of reports on the application of Conventions must be presented by the Director-General of the Office to each session of the International Labour Conference. For this provision, contained in article 23, paragraph 1, of the I.L.O. Constitution, there is no counterpart in the Charter.

Reports concerning Provisions Which Are Not Accepted (Article 22).

The Charter further requires Contracting Parties to submit to the Secretary-General of the Council of Europe, at appropriate intervals as requested by the Committee of Ministers, reports relating to those provisions of Part II of the Charter which they have not accepted. The Committee of Ministers is to determine the provisions on which such reports are to be requested and the form they shall take. This corresponds to the rule in article 19, paragraph 5 *(e)*, of the I.L.O. Constitution, that States Members must report, as decided by the Governing Body of the Office, on the position of their law and practice in regard to the matters dealt with in unratified Conventions, stating the difficulties which prevent or delay ratification. The Governing Body generally asks for reports on a varying number of Conventions each year and adopts either general or special forms for their drafting.

Communication of Copies (Article 23).

The Charter states that each Contracting Party shall communicate copies of its reports referred to in the above two Articles (21 and 22) to such of its national organisations as are members of the international organisations of employers and trade unions to be invited, under Article 27, paragraph 2, to be represented at meetings of the Subcommittee of the Governmental Social Committee. The origin of this provision is to be found in article 23, paragraph 2, of the I.L.O. Constitution, which requires each Member to communicate to the representative organisations of employers and workers copies of the reports on ratified and unratified Conventions.

The second paragraph of Article 23 of the Charter says that Contracting Parties shall forward to the Secretary-General of the Council of Europe any comments on the reports received from such national organisations if the latter so request. There is a similar practice in connection with international labour Conventions,

whereby the forms adopted by the Governing Body of the Office for drafting reports on the application of Conventions contain a question asking governments whether they have received any observations from employers' or workers' organisations in their countries regarding " the practical fulfilment of the conditions prescribed by the Convention or the application of the national law implementing the Convention ". Governments are also requested in these forms to send a summary of such observations together with any comments they consider useful.

Examination of the Reports by a Committee of Experts (Articles 24 and 25).

The Charter provides that reports sent by governments in accordance with Articles 21 and 22 (i.e. concerning accepted and non-accepted provisions) shall be examined by a Committee of Experts, to which any comments forwarded by organisations of employers and workers as required by Article 23, paragraph 2, are also to be submitted. This rule is similar to the practice followed by the I.L.O. since 1927, when it was decided that reports concerning the application of international labour Conventions should be examined by a Committee of Experts on the Application of Conventions and Recommendations, which has 17 members at present.

The Committee of Experts is to consist of not more than seven members appointed by the Committee of Ministers from a list of independent experts of the highest integrity and of recognised competence in social and international questions nominated by the Contracting Parties. This provision drew some comment from the Workers' representatives at the Tripartite Conference. They pointed out that the Contracting Parties and the Committee of Ministers were essentially akin and that if the Committee of Ministers appointed persons nominated by the Contracting Parties this would mean that nomination and appointment were made by the same authority. The Workers referred to the procedure followed for the I.L.O. Committee of Experts on the Application of Conventions and Recommendations, where appointments are decided upon by the Governing Body of the Office on the proposal of the Director-General. They proposed that the members of the Committee of Experts of the Council of Europe should be chosen from a list of independent experts nominated by the Contracting Parties in consultation with the national organisations of employers and workers referred to in the existing text of Article 23, paragraph 1. They felt this would act as a safeguard against the appointment of persons who might be prejudiced against the interests of employers and workers. This suggestion was opposed by the Employers'

group and by almost all the Government members, who expressed their desire to ensure that independent experts should be appointed and that no procedure for nomination should be adopted which might lead to sectional pressures. The Charter specifically mentions that the experts must be independent, but it does seem that their method of appointment fails to stress the international character of their functions to the same extent as does the corresponding procedure for the members of the I.L.O. Committee of Experts.

The last three paragraphs of Article 25 of the Charter deal with the term of office of experts, which is for a period of six years, with the possibility of reappointment.

Participation of the International Labour Organisation (Article 26).

The Charter further states that the I.L.O. shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts.

Subcommittee of the Governmental Social Committee (Article 27).

Once the reports submitted by governments have been examined by the Committee of Experts, they are submitted together with the conclusions of the Committee for examination by a Subcommittee of the Governmental Social Committee of the Council of Europe, to be composed of one representative of each of the Contracting Parties. This new phase of the supervision procedure may be described as political in contrast to the technical phase of examination by the Committee of Experts. For international labour Conventions, the equivalent would be the examination by the Committee on the Application of Conventions and Recommendations instituted each year by the International Labour Conference. There are, however, two differences between the two forms of procedure.

Firstly, the Charter states that the Subcommittee of the Governmental Social Committee shall be composed of representatives of the Contracting Parties, that is to say only of States which have ratified the Charter, whereas the I.L.O. Conference Committee is made up of representatives of States without distinction regarding whether they have ratified the Conventions under consideration or not, since this procedure is carried out within the framework of an international organisation in which all States Members can participate. In this connection reference should also be made to the comments below concerning the Committee of Ministers.

The second difference between the two procedures is that the Subcommittee is made up solely of representatives of governments, while under the tripartite structure of the I.L.O. the Conference Committee comprises Government, Employer and Worker representatives, with equal voting rights for each group.

The representation of employers and workers on the Subcommittee was the subject of spirited discussion. The original draft provided for participation of representatives of international employers' and workers' organisations in an advisory capacity. The Tripartite Conference was accordingly presented with several proposals, submitted in the first instance by the Workers' members and then by the Belgian, French and Luxembourg delegations, which suggested various methods whereby representatives of national organisations of employers and workers could be associated in the work of the Subcommittee, or within some other committee or working group, not merely with consultative status but with actual voting powers. These various proposals were not supported by the majority at the Conference.

The Consultative Assembly then suggested that representatives of international organisations of employers and trade unions having consultative status with the Council of Europe should be placed on an equal footing with Government representatives in the Subcommittee.

The final text of the Charter reproduces the original text submitted by the Social Committee, with certain changes in form. It retains the consultative capacity of representatives of employers' and workers' organisations, who come into the work of the Social Committee at the level of international rather than national organisations. It provides that the Subcommittee shall " invite not more than two international organisations of employers and not more than two international trade union organisations . . . to be represented as observers in a consultative capacity at its meetings ". In this way the Subcommittee has some degree of latitude in deciding which organisations it will invite.

Following a decision by the Social Committee during the final stage of its work, the same paragraph goes on to state that the Subcommittee " may in addition consult no more than two representatives of international non-governmental organisations having consultative status with the Council of Europe, in respect of questions with which the organisations are particularly qualified to deal, such as social welfare and the economic and social protection of the family ".

It is also stated that the Subcommittee shall present to the Committee of Ministers a report containing its conclusions and append the report of the Committee of Experts.

The Consultative Assembly (Article 28).

The original draft Charter did not contain any express provision regarding participation by the Consultative Assembly in the ma-

chinery of supervision ; but, following suggestions by the Assembly, the final text now contains a new Article stating that the Secretary-General of the Council of Europe shall transmit to the Consultative Assembly the conclusions of the Committee of Experts and that the Consultative Assembly shall communicate its views on those conclusions to the Committee of Ministers.

The Committee of Ministers (Article 29).

The Charter stipulates that, by a majority of two-thirds of the members entitled to sit on the Committee, the Committee of Ministers may, on the basis of the report of the Subcommittee and after consultation with the Consultative Assembly, make to each Contracting Party any necessary recommendations. In contrast to the provisions governing the Subcommittee (in Article 27), it is not only the representatives of ratifying States which may sit on the Committee of Ministers when application of the Charter is debated. The final text of the Charter also requires a prescribed two-thirds majority, which was not originally included and which is not required in the organs of the I.L.O. when the application of Conventions is under consideration, either in the course of the periodical examination of reports or in respect of complaints and representations covered by articles 24 *et seq.* of the I.L.O. Constitution. No similar procedure to that followed for complaints and representations has been included in the Charter.

Nature of Supervisory Machinery.

One particularly interesting feature is that the Appendix to the Charter states, in connection with Part III, that the Charter contains legal obligations of an international character, the application of which is subject only to the supervision provided for in Part IV thereof. It is not very clear what the precise effect of this stipulation, which was added by the Committee of Ministers in the final stage of its work, will be. It is obvious enough that, at the international level, the only system for supervision of the application of the Charter is that provided for in Part III, but, under the Constitutions of several Members of the Council of Europe, ratification and publication of the Charter would lead to its incorporation in national legislation, and it could therefore be invoked in courts of law as a part of the body of national legislation. This was the sort of situation which the Governing Body of the Office had in mind when it included in the annual forms of report on the application of international labour Conventions a special question designed for countries where, in accordance with the national Constitution, " ratification of the Convention gives the force of national law to its terms ".

Derogations, Methods of Application and Final Clauses (Part V, Articles 30-37)

Part V of the Charter contains provisions, some of which are of considerable importance, regarding derogations to the Charter and various methods of application, as well as the final clauses.

Derogations in Time of War or Public Emergency (Article 30).

The Charter states that, in time of war or other public emergency threatening the life of the nation, any Contracting Party may take measures derogating from its obligations under the Charter, to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. Any Contracting Party which avails itself of this right of derogation is required to keep the Secretary-General of the Council of Europe informed of the measures taken and of the reasons therefor and to advise him when such measures have ceased to operate. The Secretary-General will inform the other Contracting Parties and the Director-General of the Office of all communications received in this connection.

This provision can be compared to those contained in several international labour Conventions allowing suspensions or derogations " in the event of war or other emergency endangering the national safety " or " in case of *force majeure* " or " when in case of serious emergency the public interest demands it " and similar terms. In certain cases it is specified that suspension cannot be decided upon before employers' and workers' organisations have been consulted. Where Conventions do not contain any special clause of this type, the general principles governing the action of supervisory organs are that the obligations deriving from them do not lapse in cases of war or *force majeure* but may be suspended if the State concerned is unable to fulfil them for reasons of *force majeure.*

Restrictions (Article 31).

Some comment is called for on the Article on restrictions, which stipulates that the effective exercise of the rights set forth in the Charter may not be subject to any restrictions or limitations not specified in Parts I and II, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The Article goes on to state that restrictions permitted under the Charter to the rights and obligations set forth therein shall not be applied for any purpose other than that for which they have been prescribed.

The Workers' representatives at the Tripartite Conference first of all asked for the deletion of this Article, since they felt that it was couched in excessively broad terms which might limit existing rights. Following discussion, they suggested a more precise wording and proposed the deletion of the words " for the protection of the rights and freedoms of others or . . .", in order to avoid too wide an interpretation. This proposal was rejected by the Conference.

Reference to international labour Conventions reveals no provisions similar to those of the Charter with regard to possible restrictions on the standards provided for in Conventions. The only case of an express stipulation of this kind occurs in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 8 of which states that " in exercising the rights provided for in this Convention, workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land ". The same Article goes on to state, however, that " the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention ". In the absence of any similar passages in other Conventions, it would seem that these guarantees depend on constitutional law and the public interest—always remembering, however, that a ratifying State is required to take all necessary steps in order to apply the particular Convention, including the repeal or amendment of provisions incompatible with it.

Relations between the Charter and Domestic Law or International Agreements (Article 32).

The Article stating that the provisions of the Charter shall not prejudice those of domestic law or of treaties or other instruments more favourable to the persons protected is clearly derived from article 19, paragraph 8, of the I.L.O. Constitution, which states similarly that international labour standards constitute minimum standards of protection.

Implementation by Collective Agreements (Article 33).

Application through collective agreements raised complex problems owing both to the variety of subjects covered by the Charter and to the wide diversity of legal systems among the member States, in some of which certain of these matters are dealt with by way of legislation whereas in others they are governed by collective agreements.

The same problem has arisen frequently in connection with international labour Conventions. The general provision laid down in article 19, paragraph 5, of the I.L.O. Constitution is particularly

flexible, stating as it does that Members ratifying a Convention shall take " such action as may be necessary to make effective the provisions of such Convention ". This leaves a considerable area to the discretion of each country regarding methods of applying Conventions, subject to the supervision procedure established. Moreover, several Conventions expressly mention the possibility of implementation by way of collective agreement, whereas others either provide for or entail the adoption of legislation.

The method followed in the Charter is to list a number of provisions (paragraphs 1, 2, 3, 4 and 5 of Article 2 concerning the right to just conditions of work, paragraphs 4, 6 and 7 of Article 7 concerning the right of children and young persons to protection, and paragraphs 1, 2, 3 and 4 of Article 10 concerning the right to vocational training) pointing out that in countries where these matters are normally regulated through collective agreement or dealt with otherwise than by law the obligations stated shall be considered as fulfilled if these Conventions are applied to the great majority of workers through such agreements or other means. In order to ensure a proper balance, it is also specified that, in countries where these matters are normally the subject of legislation, compliance with the undertakings concerned shall be considered as effective if the provisions are applied by law to the great majority of the workers concerned.

Apart from the choice of the provisions of the Charter to be mentioned in this Article for the purpose of application through collective agreement (a matter on which several proposals were made but no serious divergence of views arose), the discussion centred on determining what limits this Article might impose on the scope of the Charter. The Workers' members, with the support of the Belgian Government delegation, therefore proposed that the Tripartite Conference state that application through collective agreement could not be authorised unless States provided evidence that the relevant provisions were applied to not less than 80 per cent. of employed workers. This way of establishing the scope of the Charter by using statistical criteria was modelled on the Social Security (Minimum Standards) Convention, 1952 (No. 102) ; the scope of other Conventions, however, is defined in each case by special provisions, and Conventions must be applied to all persons covered by that definition, unless, as is the case in some, there are specific clauses permitting exclusions or exceptions which can be invoked. The Workers' proposal met with objections on the part of the Employers, who pointed out the difficulties involved, as well as from several Governments ; and it was finally decided to keep to the original draft.

Territorial Application (Article 34).

After first stating that the Charter shall apply to the metropolitan territory of each Contracting Party—each signatory government being at liberty to specify to the Secretary-General of the Council of Europe the territory which shall be considered as such—Article 34 goes on to provide that any Contracting Party may, at the time of ratification or at any time thereafter, declare that the Charter shall extend in whole or in part to the non-metropolitan territory or territories specified in the said declaration for the international relations of which it is responsible.

This provision is to a considerable extent based on the system established for international labour Conventions by article 35 of the I.L.O. Constitution. Not all of the features of that system are exactly reproduced in the Charter, however. Article 35 of the Constitution, for instance, distinguishes between non-metropolitan territories in which the questions covered by the Convention are not within the competence of the authorities of a given territory and those where they are. In the first case, ratifying States undertake to apply the Convention to such territories, unless the Convention is inapplicable owing to local conditions, or subject to such modifications as may be necessary in order to adapt it to those conditions. Each State is further required, as soon as possible after ratification, to communicate to the Director-General of the Office a declaration indicating to what extent it undertakes to ensure application of the provisions of that Convention. In addition, in accordance with the forms adopted by the Governing Body of the Office, reports on the application of Conventions in such territories must provide information on various subjects and specify, in cases where the Convention has not been declared applicable without modification, the progress which has been accomplished towards complete application of the Convention. In the case of territories where the subjects dealt with in a ratified Convention do come within the competence of the authorities of those territories, the States responsible for their international relations are required to bring that Convention as soon as possible to the notice of the governments of those territories. They may then subsequently, in agreement with those governments, communicate on behalf of those territories a declaration indicating acceptance of Conventions or a declaration of acceptance specifying whatever modifications are required in the light of local conditions. The I.L.O. Constitution also expressly provides for reports to be sent, whether or not the Convention has been accepted.

Signature, Ratification and Entry Into Force (Article 35).

The final clauses of the Charter state, *inter alia*, that it shall be open for signature by the Members of the Council of Europe and

that it shall be ratified or approved by them. It is to come into force as from the thirtieth day after the date of deposit with the Secretary-General of the Council of Europe of the fifth instrument of ratification or approval. In the case of States ratifying subsequently, it is to come into force as from the thirtieth day after the date of deposit of the instrument of ratification or approval. The Secretary-General is required to notify all the Members of the Council of Europe and the Director-General of the Office of the entry into force of the Charter and of the names of the Contracting Parties which have ratified it ; this provision was added following a recommendation by the Tripartite Conference.

Two other proposals had been put before the Tripartite Conference. The first of these came from the Belgian Government and called for the insertion in Article 35 of a provision based on article 19 of the I.L.O. Constitution which would require each government to submit the Charter to its Parliament, together with a commentary setting out the stages proposed for its implementation, within a period of 18 months following signature or adoption of the text by the Committee of Ministers. This proposal was not adopted, one of the objections being that the submission of international labour Conventions to the competent authorities is laid down in the I.L.O. Constitution whereas it would be difficult to write procedure prior to ratification into the Charter, which would have no legal force until it actually was ratified.

The Workers put forward a proposal to follow the current practice for international labour Conventions, whereby the Charter would have come into force after the second rather than the fifth ratification. This proposal was also turned down.

Amendments (Article 36).

Amendments to the Charter may be proposed by any Member of the Council of Europe in a communication addressed to the Secretary-General of the Council of Europe, who shall transmit it to the other Members. Such proposed amendments shall then be examined by the Committee of Ministers and submitted to the Consultative Assembly for opinion. The entry into force of any amendment approved by the Committee of Ministers is subject to its acceptance by all Contracting Parties.

Denunciation (Article 37).

The Charter provides for various methods of denunciation, but none may take place within a period of five years following entry into force of the Charter for the particular country, or before the end of any successive period of two years, subject to six months'

notice in each case. States may then denounce the Charter as a whole or any Article or paragraph in it, provided that—as suggested by the Tripartite Conference—the number of Articles or paragraphs by which that State would remain bound is not less than the minimum number required for ratification and that these Articles or paragraphs continue to comprise those contained in the " compulsory nucleus " laid down as a condition for ratification. It is also provided that the Charter may be denounced as a whole or in respect of the provisions it contains concerning non-metropolitan territories. These various forms of denunciation, in the same manner as ratifications and declarations concerning non-metropolitan territories, must be communicated by the Secretary-General of the Council of Europe to the Contracting Parties and to the Director-General of the International Labour Office.

The original draft also contained a concluding provision under which any Contracting Party which ceased to be a Member of the Council of Europe would also cease to be a party to the Charter. At the Tripartite Conference the representative of the Belgian Government was backed up by several other delegations and by the Workers' members when he proposed deletion of this provision, arguing that international labour Conventions continue to bind ratifying States even after they have ceased to belong to the Organisation. In accordance with this suggestion, the Committee of Ministers decided that the provision should be deleted.

Appendix (Article 38)

The concluding Article of the Charter states that the Appendix, which contains details and interpretations regarding the scope of provisions, the chief among which are referred to above, shall form an integral part of the Charter.

Conclusion

After thus surveying the provisions of the Charter and comparing its contents with corresponding international labour standards and with suggestions put forward by the Tripartite Conference, it is possible to draw certain general conclusions regarding the effect of these standards and suggestions.

The first thing to be noted is how closely the substantive provisions of the Charter follow the pattern of international labour Conventions and Recommendations. Although the Charter contains passages on subjects—such as social services, the right of the family as such to social and economic protection, the right to engage in a gainful occupation on the territory of other Contracting

Parties and the right of migrants to protection against expulsion—which are not covered by any I.L.O. Convention or Recommendation, the parallel is very evident between the Charter and the International Labour Code in the great majority of fields. The standards laid down are frequently similar, and in one case the Charter even refers expressly to a particular Convention.

As a general rule, however, the Charter is for obvious reasons less detailed and precise than the corresponding Conventions or Recommendations. Sometimes it falls short of their provisions; this applies to hours of work, discrimination, the right to organise, medical examination of young workers, the right of women workers to protection, labour inspection, and application of the Charter to foreigners other than nationals of Contracting Parties. Moreover, the possibilities of derogation or limitation provided in Article 31 and elsewhere and the facilities for application through collective agreements may permit greater restrictions than those authorised under international labour Conventions. But there are also other fields—such as holidays with pay, the right to strike and the protection of migrant workers and their families—in which the Charter goes further than Conventions or Recommendations. The same can be said of the rules governing application of the Charter (always allowing for the features peculiar to the structure of the Council of Europe), the principal effect of which was to preclude such close participation by employers' and workers' organisations in the supervision procedure as exists in the I.L.O.

This patent influence of international labour standards and of the I.L.O.'s supervision system made itself felt right from the earliest stages of drafting the Charter. It became even more marked, however, following the Tripartite Conference and the recommendations it made for greater conformity between the Charter and international labour Conventions and Recommendations and, in certain cases, in order to go beyond the I.L.O.'s standards or to break new ground not covered by those standards.

This survey has shown how far the recommendations of the Tripartite Conference were followed. In fact, practically all the Conference's unanimous recommendations—including those on full employment as the objective of an employment policy (Article 1), improvement of provisions governing occupational safety and health (Article 3), the right of workers to a fair remuneration whereby they and their families may enjoy a decent standard of living (Article 4, paragraph 1), provision for a reasonable period of notice in the case of termination of employment (Article 4, paragraph 4), extension of the right to organise to public officials (Article 5), recognition of the voluntary nature of arbitration (Article 6, paragraph 3), specific recognition of the right to strike

(Article 6, paragraph 4), recognition of the right of young workers to a just remuneration or an appropriate allowance (Article 7, paragraph 4), provision of a free vocational guidance service (Article 9), fuller provisions relating to vocational training (Article 10), making it obligatory specifically to grant the right to engage in a gainful occupation in other member countries (Article 18), and consultation of employers' and workers' associations in different fields, for instance with regard to safety and health (Article 3) and to vocational training (Article 10, paragraph 4 *(d)*), were included in the final text. There are also the requirements that a labour inspection system be maintained (Article 20, paragraph 5), that a " nucleus " of compulsory articles be established for ratification of the Charter (Article 20, paragraph 1 *(b)*), that entry into force of ratifications and declarations concerning non-metropolitan territories and denunciations of the Charter should be reported by the Secretary-General of the Council of Europe to the Director-General of the Office (Article 20, paragraph 4; Article 34, paragraph 5; Article 35, paragraph 4; Article 36; and Article 37, paragraph 1). Similarly, the provision was deleted whereby States ceasing to be Members of the Council of Europe should cease to be bound by the Charter, and the terms of provisions were frequently altered to bring them more closely into line with international labour Conventions, for instance those concerning the weekly rest period (Article 2, paragraph 5), or the prohibition of dismissal during maternity leave (Article 8, paragraph 2).

In this way both international labour standards themselves and the recommendations of the Tripartite Conference had an extensive and visible influence on the contents of the European Social Charter and led to numerous improvements in the initial draft.

This contribution to the preparation of the final text of the Charter will be followed up by the I.L.O.'s contribution to the process of supervising its application. Experience acquired over a long period of years with regard to application of international labour Conventions can thus be put to profit in the implementation of the European Social Charter.